

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Criminal No. 2007-61
v.	)	
	)	
[REDACTED], COURTNEY MATTHIAS,	)	
[REDACTED], MONICA BROWNE, JUDY	)	
STOWE, and VISHMA SHIVANA PERSAD,	)	
	)	
Defendants.	)	
_____	)	

ATTORNEYS:

**Jason T. Cohen, AUSA**  
St. Thomas, U.S.V.I.  
*For the plaintiff.*

**Robert L. King, Esq.**  
St. Thomas, U.S.V.I.  
*For defendant Courtney Matthias.*

**Leonard B. Francis, Esq.**  
St. Thomas, U.S.V.I.  
*For defendant Monica Browne.*

**George Hodge, Esq.**  
St. Thomas, U.S.V.I.  
*For defendant Judy Stowe.*

**Jesse A. Gessin, AFPD**  
St. Thomas, U.S.V.I.  
*For defendant Vishma Shivana Persad.*

**ORDER**

**GÓMEZ, C.J.**

Before the Court is the motion of defendant Vishma Shivana

Persad ("Persad") to sever her trial from that of her co-defendants.

Persad and her five co-defendants<sup>1</sup> have been indicted on charges of bringing or attempting to bring aliens into the United States. Persad asserts that she will be prejudiced by a joint trial for two reasons. First, Persad argues that she will be prejudiced by the "considerable evidence" against one of her co-defendants, Courtney Matthias ("Matthias"). (Def. Persad's Mot. to Sever 1.) According to Persad, that evidence has no relevance to her case. Persad makes no effort, however, to explain what that evidence is or how it will prejudice her. Second, Persad contends that she will be prejudiced because the government has not yet arrested two of her co-defendants. Again, Persad sheds no light on the nature of that purported prejudice.

"Motions to sever are governed by FED. R. CRIM. P. 14<sup>2</sup>, which permits the trial court to grant a defendant's motion for severance if it appears that the defendant will be prejudiced by

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<sup>1</sup> Two of the defendants in this matter have not been arrested.

<sup>2</sup> FED. R. CRIM. P. 14 provides, in relevant part:

If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

a joint trial with other defendants." *United States v. Console*, 13 F.3d 641, 655 (3d Cir. 1993). A defendant has "a heavy burden in gaining severance." *United States v. Quintero*, 38 F.3d 1317, 1343 (3d Cir. 1994). The burden is so high because "there is a preference in the federal system for joint trials of defendants who are indicted together." *Zafiro v. United States*, 506 U.S. 534, 537 (1993); accord *United States v. Urban*, 404 F.3d 754, 775 (3d Cir. 2005). "Mere allegations of prejudice are not enough . . . ." *United States v. Reicherter*, 647 F.2d 397, 400 (3d Cir. 1981) (citations omitted). Rather, a defendant "must demonstrate clear and substantial prejudice resulting in a manifestly unfair trial." *Id.* (citations omitted). The Supreme Court has held that severance should be granted "only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro*, 506 U.S. at 539. Moreover, "the choice of whether to sever . . . rests in the sound discretion of the district courts." *United States v. Lore*, 430 F.3d 190, 205 (3d Cir. 2005).

The defendants in this matter have all been indicted together for similar offenses. Persad is charged in two counts of the indictment. In one of those counts, Persad is charged alongside four of her co-defendants, while in another count she

is charged alongside one of her co-defendants. The same facts, witnesses, and evidence would need to be repeated if a second trial were conducted. Such "separate trials are simply more expensive and time-consuming." *United States v. Gonzalez*, 918 F.2d 1129, 1137 (3d Cir. 1990); see also *United States v. Console*, 13 F.3d 641, 655 (3d Cir. 1993) (holding that "the public interest in a joint trial substantially outweighed the possibility of prejudice to the defendant" where "[t]he indictment charged both [defendants] with [the same] violations").

Furthermore, to the extent Persad asserts that she will suffer prejudice because of the government's evidence against Matthias, that assertion fails because "a defendant is not entitled to a severance merely because evidence against a co-defendant is more damaging than the evidence against the moving party." See *United States v. Somers*, 496 F.2d 723, 730 (3d Cir. 1974); see also *United States v. Davis*, 397 F.3d 173, 182 (3d Cir. 2005).

In short, Persad's mere allegations of prejudice, with nothing more, fail to establish why severance is appropriate in this matter. See, e.g., *Reicherter*, 647 F.2d at 400 (affirming the district court's denial of a motion to sever where the "[d]efendant pinpoints no specific instances of prejudice").

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The premises considered, it is hereby

**ORDERED** that the motion to sever is **DENIED**.

S\\_\_\_\_\_  
**CURTIS V. GÓMEZ**  
Chief Judge